Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1996

JAMES M. SAATHOFF,

PETITIONER

v.

E. JOHN WHELAN; CHARLES HULBERT

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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44 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit has created an irreconcilable conflict between the circuits by ruling that acts such as perjury committed in civil court are not overt acts in furtherance of a conspiracy when committed by the defendants, even though the acts led the trial court to deprive the petitioner of his property without just compensation, in contravention of the decisions of the Fifth and Sixth Circuits which ruled that a party's wrongful conduct in court is an overt act, even when committed by a defendant or in the appellate process.

2. Whether the court can rule that a one year statute of limitations bars this suit, without determining the date upon which the statute began to run, as that date is dispositive as to whether the one or three year statute applies to acts which occurred prior to Wilson v.Garcia, (1985) 471 U.S. 262.

3. Whether the court's ruling that the constitutional injury occurred prior to the final judgment of the California Supreme Court in petitioners inverse condemnation suit, which was required by this court in Williamson County Regional Planning

Comm. V. Hamilton Bank, (1985) 473 U.S. 172, was proper even though Dodd v. Hood River County, (9th Cir. 1995) 59 F.3d 852 county rejects this argument.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue the Judgment of the United States Court of Appeals for the Ninth Circuit entered on March 21, 1996, which affirms that the State of California, through the actions of its employees, can take a person's mobile home for public use as a state ranger station

barracks, and his interest he had in land for use as a state park, without a single dime of compensation.

PARTIES

James M. Saathoff, Plaintiff, Appellant and Petitioner

E. John Whelan, Defendant, Appellee, and Respondent

Charles Hulbert, Defendant, Appellee, and Respondent

OPINIONS BELOW

The opinion and judgment of the United States Court of Appeals for the Ninth Circuit is reported, not published, at 1996 U.S. App. LEXIS 6477 (1996), is reprinted as Appendix A, entered March 21, 1996. It affirms the judgments of the District Court of the Northern District of California based on the unpublished order of that court pursuant to FRCP 12(b)(6), dated June 17, 1994, and judgment pursuant to FRCP 54 judgment filed October 11, 1994.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit entered on March 21, 1996. Petitioner timely filed a petition for publication which was denied without comment. The jurisdiction of this Court to review the judgment on petition for certiorari rests upon Section 1254(1) of the Judicial Code 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

AND STATUTES INVOLVED

United States Constitution, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and affects, against unreasonable searches and seizures...."

United States Constitution, Amendment V:

"No person shall... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment XIV:

"...nor shall any State deprive any person of life, liberty, or property, without due process of law...."

United States Constitution, Title 42 § 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

United States Constitution, Title 42 § 1985:

"Conspiracy to interfere with civil rights

...

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or

deprivation, against any one or more of the conspirators."

United States Constitution, Title 42 § 1986:

"Every person unto, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all the damages cause by such a wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect, a refusal may be joined as defendants in the action."

California Civil Code 338:

"Within three years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for trespass upon or injury to real property.

(c) An action for taking, detaining, or injuring any goods or chattels including actions for the specific recovery of personal property...

(d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not to be deemed to have

accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

California Civil Code 340:

"Within one year:

1 ...

2. ...

3 An action... for injury to... caused by the wrongful act or neglect of another..."

STATEMENT OF THE CASE

Reduced to the basics, this case is simply about the physical taking of the petitioner's home and interest in land, for public use, without compensation. The State agents conspired to take petitioner's property in violation of the law. Then they wrongfully used the judicial process to cover up the facts of their illegal taking, including their 1995 perjury to the federal court in defendants' verified answer to the complaint, paragraphs 1 and 3, wherein they denied knowledge of petitioner's prior possession The court was silent on this act, and then, creating a new and different rule, disagreed with the petitioner's assertion that the respondents' actions in court were overt acts were in furtherance of their conspiracy, in direct contradiction with established law of the Fifth and Sixth Circuits. The court, in affirming the dismissal, ruled that a one year statute of limitations applied, and that the petitioner's section 1983, 1985, and 1986 claims were not filed within one year of the last overt act.

SUMMARY OF FACTS

Petitioner's Possession and Ownership of Real and Personal Property.

Petitioner moved his mobile home and took a life estate possession in the subject property in 1975 but failed to record his interest. The mobile home was affixed to the land with all the necessary accouterments. On January 26, 1977, the State of California filed an eminent domain action against the property but did not name petitioner in the suit. In support of the State's attempt to acquire the property, respondents' agent, Don Perkins, inspected the property and informed State's land agent Tandy Zolney that *the petitioner's mobile home was on the property before the close of escrow.* A second inspection also occurred but the facts of this inspection have never been revealed. Meanwhile, a grant deed was conveyed from the recorded titleholder, Mr. Zippie, to the State of California in 1978. However, title to petitioner's mobile home, his personal property and life estate in the land have never been conferred to the State of California.

Respondent's Knowledge of Petitioner's Prior Possession

In August of 1983, respondent John Whelan discussed his knowledge of petitioner's prior possession with agent John Bagget, and decided to commit the first illegal act, to treat the petitioner as a trespasser, not as a property owner. Similarly, respondent Charles Hulbert documented his knowledge of petitioner's prior possession on September 20, 1983 in a letter to Kenneth Mitchel, the Chief of the Acquisition Division of the State of California. Respondent Whelan offered to buy petitioner's mobile home on June 26, 1984 for $4,000. Petitioner rejected the offer as too low. Respondent then told petitioner he would not get a dime for his property and threatened to tear the building apart, piece by piece.

Respondents' Conspiracy to Take Petitioner's Property in State Court

Respondents then set out on their conspiratorial course in state court to take petitioner's property for public use without compensation and filed the summary procedure of an unlawful detainer (U.D.) against petitioner. The Ninth Circuit acknowledged

that this action could be construed as a conspiratorial act. The U.D. complaint was filed March 26, 1984, followed by a first amended complaint on April 6, 1984. The complaint, number 45045, demanded "possession of certain premises, more particularly described as a 3-acre parcel...." Petitioner *in pro per*'s answer was stricken and a default judgment entered in February 1985 for failure to timely serve discovery responses. The decision was affirmed on appeal, and certiorari, in bank, was denied in February 1986. Petitioner was then arrested for trespassing, and convicted of repossession of lands after removal by legal process. This decision was affirmed on appeal in 1989. During this criminal trial, respondents were cited in contempt of court for failure to disclose documents, and never did disclose the exculpatory documents in violation of a court order dated October 15, 1987.

Petitioner sought redress through the state court system to clear title and seek possession of his home and the 535 acres of property. He filed a trespass claim to evict the trespassing State of California and its agents. Again, the respondents deliberately

withheld material documents and testified under oath that they had no knowledge of petitioner's prior possession, all the while knowing that the 45045 judgment was fraudulently gained. Further, 45045 was asserted even though it did not apply to this suit because counterclaims are statutorily prohibited in U.D. cases and the judgment only affected three acres, not petitioner's home, personal property, and the other 532 acres. Unfortunately, the trial court improvidently dismissed the case without considering these facts.

Plaintiff filed a subsequent action to quiet title of the entire property. In this action, the first wherein discovery was actually (and apparently accidentally) allowed, plaintiff finally received documents from the respondents evidencing that they were not bonafide purchasers as they claimed, and that the 45045 action was a complete fabrication. In fact, respondent Hulbert's own document acknowledged he may face personal liability for his actions, when he wrote that "to knowingly not pay... [landholders]... may lead to... personal liability on the state official who refuses to make payment" While the court dismissed the

action on summary judgment, it refused to state its reasons or the facts in support of its ruling, as required by state law.

However, now armed with this evidence of a potential Title 42, Section 1983 violation, petitioner filed the necessary action in inverse condemnation in the state court as required by Williamson County Regional Plan. Comm. v. Hamilton Bank, (1985) 473 U.S. 172, giving the state court every opportunity to correct its own mistakes, the petitioner appealed to the state's highest court, but an in bank decision let the dismissal stand.

Respondents' Conspiracy and Perjury to Take Petitioner's Property in Federal Court

It is undisputed that after twelve years of litigation there never was an eminent domain action against petitioner's home. It is further undisputed that plaintiff's interest in 532 acres of land has never been adjudicated by any court, inclusive of the 45045 case, as that case was limited to only three acres. It is further undisputed that the petitioner has never been compensated even one dime for any of his property even though his home is still being

used by the California State Park System, his personal belongings apparently were sold at auction, and the disputed land is now part of Mt. Diablo State Park.

Petitioner filed suit in federal court, after the California Supreme Court, on February 17, 1993, finally said, there would be no compensation for the taking of petitioner's real and personal property. Petitioner has pled and proved in his moving papers and exhibits, that a constitutional taking occurred under the Fourth, Fifth, and Fourteenth Amendments, and that he has been deprived of his constitutional civil rights pursuant to 42 U.S.C. §§ 1983, 1985, and 1986.

Respondents' FRCP 12(b)(6) Motion

Respondents asserted a motion to dismiss based on the twin grounds of res judicata and the statute of limitations. The district court stated that the statute of limitations is "generally one year." Improperly, the court looked beyond the face of the complaint and made findings of fact that the last overt act occurred in 1988, ignoring the pleadings where the respondents admitted

conspiratorial acts as late as 1991. The district court also held that the state agents failure to come forward to prevent a constitutional injury, was not actionable under Section 1986. However, the court refused to dismiss the property claims because Sections 1983 and 1985 had a different overlay than the state court actions, and McDougal v. County of Imperial, (9th Cir. 1986) 942 F.2d 668, may have tolled the entire property claim.

Respondents' FRCP 54 Motion

Respondents asserted a motion for summary judgment on the same two grounds of res judicata and the statute of limitations. The court held that the claim ripened before the decision of the State Supreme Court denied the inverse condemnation suit, suggesting that "the taking of the property itself" ripened the claim. The court summarily dismissed the entire equitable tolling argument and barred the remaining causes of action based on the res judicata and statute of limitations arguments, holding that "six prior cases is enough."

Ninth Circuit Appeal

On appeal to the Ninth Circuit, the state re-asserted its res judicata and statute of limitations defenses. In oral argument, the court stated to the respondents that it appeared that "the State has stolen the trailer... and that's a constitutional taking." The respondents "conceded" the taking and constitutional injury, but justified it by stating that it happened in 1986 or 1987, and if the petitioner wanted compensation, he should have complained earlier. The court continued: "If you are a thief, you have no -- no title to the property that is superior to that of the true owner then, now, or any other time." However, the written opinion of the court differed dramatically from the court's position at oral argument and barred petitioners claim in its entirety, reasoning that a one year statute of limitations applied. The court ruled that acts by a defendant are not overt acts and did not toll the statute of limitations. The petitioner was precluded from seeking just compensation for the admitted taking. Jurisdiction lies pursuant to 28 U.S.C. 1291.

REASONS FOR GRANTING THE WRIT

This case simply has to do with fairness. The State of California, through the acts of its agents, has taken petitioner's home, personal property, and interest in 535 acres of land. The State claims to have adjudicated three of the 535 acres. But the state took more than the three acres. It took petitioner's home, all of his personal property, and the other 532 acres, without any compensation or due process. Quite the opposite occurred. Nevertheless, the Ninth Circuit acknowledged that the State stole petitioner's home, fair and square. The court's ruling created a judicial shield over state agents when they defend their conspiracy in court, finding these acts were not overt acts, and fully ignored the fraud and perjury propounded in the district court. The only federal circuits to decide this issue, the Fifth and the Sixth Circuit, have rejected this result. The Ninth Circuit stands alone, and has now created a conflict among the circuits, that only this Honorable Court can resolve.

1. Whether the Ninth Circuit has created an irreconcilable conflict between the circuits by ruling that acts such as perjury committed in civil court are not overt acts in furtherance of a conspiracy when committed by the defendants, even though the acts led the trial court to deprive the petitioner of his property without just compensation, in contravention with the decisions of the Fifth and Sixth Circuits which ruled that a party's wrongful conduct in court is an overt act, even when committed by a defendant or in the appellate process.

At the heart of this entire suit, is a simple fact upon which all parties agree. That the State of California has taken the petitioner's mobile home, through physical force, and is still using it for a State Conservation Corps lodging at Hollister Hills S.V.R.A., California. Also uncontested is that 535 acres of land, which is the subject of this suit, is being used as Mount Diablo State Park, California.

It is not contested that these are good uses of the property. What is contested is whether the State has the right to take this

property without compensation in violation of the federal Constitution. Moreover, even though the respondents have asserted that any payment is barred by the statute of limitations, they have still failed to admit that the original lawsuit, which "took" three of the 535 acres, was a fraud and a sham, arising out of a conspiracy. Respondents have repeatedly denied under oath any knowledge of the petitioner's prior possession, but their own personal documents, dated PRIOR to the unlawful detainer action, evidence their knowledge, making their pursuit of the unlawful detainer action fraudulent. Respondents' repeated assertion of the U.D. judgment 45045 was an overt act in furtherance of their conspiracy, because they knew the 45045 judgment had no legal precedential affect on the remaining 532 acres or the petitioner's mobile home. The State's agents assert that no compensation is owed for the mobile home, because if the petitioner wanted payment, he should have complained earlier.

Notwithstanding the factual inaccuracy of the State's argument, this is the exact purpose of the Fifth Amendment; no property shall be taken without just compensation. This

proscriptive clause is designed to protect the people from the government when it acts improvidently. This restriction is important when, as here, the State has untold resources at its disposal to defeat an individual in *pro per*. The respondents' fraudulent concealment of the evidence of their conspiracy to wrongfully take petitioner's property has prejudiced the petitioner. On the one hand, respondents successfully argued that if the petitioner wanted to be paid for his property, he should have filed his lawsuit earlier. Simultaneously, the respondents' concealment of their conspiracy prevented the petitioner's rightful recovery in State court.

Petitioner has asserted that each time he has sought redress for the taking of his property, he has been unequivocally prevented from receiving monetary compensation, by the fraudulently perpetrated 45045 lawsuit, replete with perjured testimony and the intentional concealment of material evidence. It is inconceivable that a *pro per*, faced with the awesome power of the State Attorney's General's office would be able to prevail in the face of such fraud and conspiracy. If there ever was a time when a citizen

needed federal protection from state government, there can be no clearer case than this.

It is beyond doubt that the respondents conspired to take petitioner's property, and to violate his constitutional rights. The issue is when did respondents' last overt act occur as defined by Gibson v. United States, (9th Cir. 1986) 781 F.2d 1334. Petitioner relies on the only cases on point, those of the Fifth and Sixth Circuits, both of which support his argument that wrongful acts perpetrated in court are overt acts in furtherance of a conspiracy and lead to a conclusion opposite to the Ninth Circuit's opinion.

In Gordon v. City of Warren, (6th Cir. 1978) 579 F.2d 386, Gordon brought a suit against the City for a violation of his constitutional rights by depriving him of his real property. The district court dismissed on motion for summary judgment based on the statute of limitations. On appeal, the **Sixth Circuit reversed, holding that respondent's acts in state court in defending its unconstitutional statute were overt acts.** In so doing, Gordon followed this Court in the seminal case of Chicago, Burlington &

Quincy R. Co. v. Chicago, (1897) 166 U.S. 226, wherein "the fact that property was taken in a judicial proceeding in regular form does not satisfy due process if no adequate provision is made for compensation." Gordon at 390. The Court held that the acts in state court sufficiently prevented the plaintiff from enjoying the use of his property so as to constitute a continuing course of action. Therefore, the date upon which the statute of limitations began to run was set at the date the state supreme court finally ruled on the matter.

Similarly in Mizell v. North Broward Hospital District, (5th Cir. 1970) 427 F.2d 468, the Fifth Circuit twice reversed the district court when it dismissed the petitioner's Section 1983 and 1985 civil rights claims under FRCP 12(b)(6) and 54. **The Fifth Circuit held that the acts of respondents, in seeking a decision in their favor by the Florida Court of Appeal, was an overt act of the conspiracy.**

Now, in the instant case, the Ninth Circuit has held, that respondents' perjurious contempt of court in concealing discovery and hiding the truth, no matter how egregious, were not overt acts

because they were carried out in defense of petitioner's suit. This strained and narrow reading of the Sixth Circuit opinion, completely guts the protection of the United States Constitution and trods on this Court's opinion in United States v. Dickinson, (1947) 331 U.S. 745 which held "[t]he Fifth Amendment expresses a principle of fairness and not a technical rule of procedure enshrining old or new niceties regarding "causes of action" - when they are born, whether they proliferate, and when they die." Moreover, in reaching this opinion, the Ninth Circuit completely ignored the Fifth Circuit decision in Mizell v. North Broward Hospital District, supra, which held that the defendants' acts were an overt act of their conspiracy. This Court has long held, that"[a] conspiracy... continues, so far as the statue of limitations is concerned, so long as any further action is taken in furtherance of the conspiracy." United States v. Kissel, (1910) 218 U.S. 601.

This Court must not allow the Ninth Circuit to create a hypertechnical rule because it clearly will lead to forum shopping in conspiracy claims. These cases will then no longer resolve on the facts, but rather, on who filed the lawsuit first.

2. Whether the court can rule that a one year statute of limitations bars this suit, without determining the date upon which the statute began to run, as that date is dispositive as to whether the one or three year statute applies to acts which occurred prior to Wilson v.Garcia, (1985) 471 U.S. 262.

The Ninth Circuit held that a one year statute applies to petitioner's claims. However both the district court and the Ninth Circuit failed to identify the date when the statute started to run. The court appears to have simply used the 1994 federal filing date to determine the one year limit, even though many of the acts happened far earlier and the statute was tolled during state litigation. McDougal v. County of Imperial, (9th Cir. 1986) 942 F.2d 668. The court improperly dismissed the tolling provisions of Donoghue v. County of Orange, (9th Cir. 1988) 848 F.2d 386. If the date that the statute began to run preceded Wilson v. Garcia, (1985) 471 U.S. 261, then a three year statute of limitations should apply. California Code of Civil Procedure § 338(1). If the statute began to run when the first suit was filed, then the three year

statute of limitations would apply and make the entire overt act issue moot. This incident began in 1977 and had many overt acts prior to Wilson such as respondents' 1984 threat to tear petitioner's mobile home down piece by piece. As the Ninth Circuit is very aware, Wilson was generally not retroactive when it shortened the time period within which to file. Gibson v. United States, (9th Cir. 1986) 781 F.2d 1334, 1339. Given this result, it was fatally prejudicial for the district court and the Ninth Circuit Court to fail to determine a date when the statute began to run.

3. Whether the court's ruling that the constitutional injury occurred prior to the final judgment of the California Supreme Court in petitioner's inverse condemnation suit, which was required by this court in Williamson County Regional Planning Comm. V. Hamilton Bank, (1985) 473 U.S. 172, was proper even though Dodd v. Hood River County, (9th Cir. 1995) 59 F.3d 852 county rejects this argument.

The district court held that "other events" ripened

petitioner's claim; however, it failed to identify those events. Similarly, the Ninth Circuit did not identify the event that constituted a constitutional taking, and dismissed Williamson County Regional Planning Comm. v. Hamilton Bank, (1985) 473 U.S. 172, because it was not a statute of limitations case. However, this reasoning misses the rule of Williamson, which clearly states that a constitutional injury does not accrue until the final adjudication of the state court in inverse condemnation actions. Furthermore, this reasoning flies in the face of the Ninth Circuit's own July, 1995 ruling in which it held that requiring the petitioner to file both an inverse condemnation suit in state court at the same time he filed a constitutional taking claim in federal court was so far afield from jurisprudence that the argument was the "tail... wag[ging] the entire opinion dog," and expressly rejected that argument. Dodd v. Hood River County, (9th Cir. 1995) 59 F.3d 852.

This Court should allow the plaintiff his day in court. Not a single juror has ever heard the facts of this case. How could they when the petitioner was confronted with the unbridled power

of the State of California?

CONCLUSION

The Ninth Circuit, has gone out on a limb to support the state agents' taking of petitioner's property without compensation. The court's ruling is without precedent, flawed in its application of the Constitution and conflicts with the established law of the other circuits. The Fifth and Sixth Circuits are consistent with each other in the application of the Constitution. However. the Ninth Circuit has struck out on its own and this Court must now reign them back into conformity with the other circuits and allow this case to be heard on the merits.

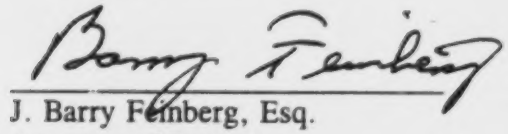
The petitioner attempted to pursue his rights for 12 years but was thwarted by the State's awesome power at every step of the way, with roadblocks thrown in his path by corrupt state agents. Even with this diligence, petitioner still has never been paid for his home or land.

Only this Honorable Court can now right this wrong, by reversing the circuit court's ruling and remanding this case for a

factual determination and hearing on the merits. Absent this Court's ruling, the Ninth Circuit will continue to fail to uphold the United States Constitution and disregard the opinions of this very Court.

Dated this 18th day of June, 1996.

Respectfully submitted,



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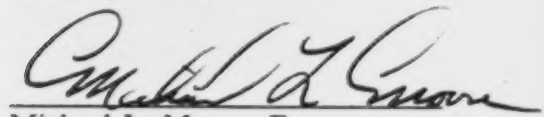
Attorney of Record



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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES M. SAATHOFF,	)	No. 94-16993
	)	
Plaintiff-Appellant,	)	D.C. No. CV-94-00522-CAL
	)	
v.	)	**MEMORANDUM***
	)	
E. JOHN WHELAN; CHARLES HULBERT;	)	
	)	
Defendants-Appellees.	)	
	)	

Appeal from the United States District Court
for the Northern District of California
Charles A. Legge, District Judge, Presiding

Argued and Submitted, March 13, 1996
San Francisco,California

Before: CHOY, BEEZER and HAWKINS, Circuit Judges.

James Saathoff appeals a grant of summary judgment in favor of defendants. Saathoff alleges the defendants, California state employees, conspired to violate his civil rights when the state

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appendix A

exercised its power of eminent domain to take property in which Saathoff claimed a life estate. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

I

There have been six previous state court actions regarding the land at issue.

In 1977, the state of California filed eminent domain proceedings to acquire land from Emmett Zippe, the record owner. Zippe conveyed the land to the state in 1978. The state did not name Saathoff as a party in the eminent domain proceeding.

Saathoff claimed that he and Zippe reached an oral agreement under which Zippe granted a life estate in portions of the condemned property to Saathoff. Saathoff claimed that he owned and occupied a mobile home on the land since 1975. The home was fixed to the land by a concrete foundation and rock skirting. When Saathoff refused to leave the property, the state instituted an unlawful detainer action against him. The state obtained a default judgment against Saathoff. The judgment was affirmed on appeal. The petition for review was denied on April 16, 1986 by the

California Supreme Court.

Saathoff then reentered the property. He was prosecuted and convicted under California Penal Code § 419 for repossession of lands after removal by legal process. The conviction was affirmed on appeal on August 3, 1989.

In March 1989, Saathoff filed an action in state court against the State of California. He alleged theories of trespass, conversion, slander of title, and "conspiracy against rights of citizens." The amended complaint dropped the "conspiracy against rights of citizens" cause of action, and added a cause of action for fraud and deceit. The trial court found Saathoff's causes of action barred by the statute of limitations. Saathoff's appeal to the California Court of Appeals was dismissed on procedural grounds on August 27, 1990.

In January 1990, Saathoff filed another action against the State of California, seeking to quiet title to the property. The State moved for summary judgment, asserting the defenses of laches and res judicata, and arguing that it was a bona fide purchaser of the land. Judgment for the State was entered on January 24, 1991. Saathoff did not appeal.

On April 22, 1991, Saathoff filed still another state court action, for inverse condemnation, against the State of California. The trial court dismissed the complaint on res judicata grounds. The California Court of Appeals affirmed, agreeing that Saathoff's cause of action was barred by res judicata. The petition for review was denied on February 17, 1993.

On February 14, 1994, Saathoff filed this civil rights action in the federal district court alleging that defendants entered a conspiracy in violation of 42 U.S.C. §§ 1983, 1985 and 1986. Defendants' alleged purpose of the conspiracy was to take Saathoff's property without compensation or due process.

The district court granted summary judgment in favor of defendants after determining that Saathoff's action was barred by the statutes of limitations and res judicata.

II

We review the grant of summary judgment de novo. Jesinger v. Nevada Federal Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). We review de novo the district court's dismissal on statute of limitations grounds. Washington v. Garrett, 10 F.3d 1421, 1429

(9th Cir. 1993).

A.

We agree with the district court that Saathoff's claims are barred by the statutes of limitations. All of Saathoff's causes of action are subject to one year statutes of limitations. McDougal v. County of Imperial, 942 F.2d 668, 672, 673-74 (9th Cir. 1991) (§ 1983 and 1985 claims); 42 U.S.C. § 1986.

For statute of limitations purposes, Saathoff's causes of action follow the "last overt act doctrine." Gibson v. United States, 781 F.2d 1334, 1340 (9th Cir. 1986), *cert. denied*, 479 U.S. 1054, 93 L.Ed.2d 979, 107 S.Ct. 928 (1987). "Under this doctrine, injury and damage in a civil conspiracy action flow from the overt acts, not from the mere continuance of a conspiracy." Id. (citation and internal quotation marks omitted).

Any "conspiracy of silence" on defendants' part does not constitute an overt act in furtherance of the conspiracy. Under the allegations of Saathoff's complaint, defendants' last overt acts in furtherance of the conspiracy occurred, at the latest, when the last

of the legal actions initiated by the defendants was final.

Saathoff argues that defendants' participation in their own defense of the state court actions constitutes an overt act in furtherance of the conspiracy to deprive Saathoff of his rights. See Gordon v. City of Warren, 579 F.2d 386, 391-92 (6th Cir. 1978). Even if we accept this reasoning, it would apply only to the actions that defendants initiated: the eminent domain proceeding, the unlawful detainer action, and the criminal prosecution. The last of these proceedings was final on August 3, 1989. Once these actions were final, defendants' alleged conspiracy--to take Saathoff's land--was complete. Saathoff cannot manipulate the statute of limitations by initiating another suit against defendants, and then accusing them of committing overt acts in furtherance of their original conspiracy when they defend against it.

We reject Saathoff's argument that the statutes of limitations did not begin to run until he lost the appeal on his inverse condemnation proceeding on February 17, 1993. Saathoff asserts that the state did not finally deny compensation until he lost the inverse condemnation suit. He cites Williamson Regional Plan. Comm'n v. Hamilton Bank, 473 U.S. 172, 87 L.Ed.2d 126, 105

S.Ct. 3108 (1985) and Sinaloa Lake Owners Ass'n v. Simi Valley, 882 F.2d 1398 (1989), *cert. denied*, 494 U.S. 1016, 108 L.Ed.2d 493, 110 S.Ct. 1317 (1990) for the proposition that a constitutional taking injury does not occur "until and unless the state denies compensation." Neither of the cases Saathoff relies upon involve statute of limitations issues. Williamson and Sinaloa hold that a constitutional taking claim is not ripe until the property owner has applied for and been denied just compensation. The cases do not say that the statute of limitations cannot begin to run until plaintiff has brought and lost an inverse condemnation proceeding. Under Saathoff's theory, a plaintiff could sit on his rights for years, bring an inverse condemnation proceeding, lose (probably on statute of limitations grounds), and restart the statutes of limitations for all constitutional claims. We refuse to create such a rule.

B.

Saathoff argues that the statutes of limitations on his federal claims were equitably tolled while he pursued his state claims. California tolling provisions govern the § 1983 and § 1985 claims. Donoghue v. Orange County, 848 F.2d 926, 930 (9th Cir. 1987).

Federal tolling provisions govern the § 1986 claim. Id. at n.3.

We do not have to reach the merits of Saathoff's equitable tolling argument, however. Even if equitable tolling applies to the time when Saathoff was pursuing his state claims, his federal claims still are barred by the applicable statutes of limitations.

Equitable tolling only suspends the running of the statutes of limitations, it does not restart the clock. Benge v. United States, 17 F.3d 1286, 1288 (10th Cir. 1994) (federal tolling); see also Rare Coin Galleries v. A-Mark Coin Co., 202 Cal.App.3d 330, 248 Cal.Rptr. 341, 345 (Cal.Ct.App. 1988) (applying California tolling principles). Saathoff's federal causes of action accrued, at the latest, on August 3, 1989, when the last of the defendant-initiated actions was final. The statutes of limitations arguably were tolled until the clerk of the Superior Court entered judgment on Saathoff's quiet title action on January 24, 1991. The statutes of limitations then began to run and 88 days elapsed before Saathoff filed his inverse condemnation suit on April 22, 1991. Assuming the statutes of limitations were tolled by the inverse condemnation suit, they were tolled only until Saathoff's petition for review was denied on February 17, 1993. After the petition for

rehearing was denied, 362 more days elapsed before Saathoff filed this suit on February 14, 1994. Adding the 88 days and 362 days when the statutes of limitations unquestionably were not tolled leads to the conclusion that Saathoff's claims are barred by the statutes of limitations.

III

Saathoff also argues that the district court erred in denying his motion for default when defendants failed to file a timely answer to Saathoff's complaint. Saathoff argues that we should review the decision de novo. We disagree. We review for abuse of discretion. See O'Connor v. State of Nevada, 27 F.3d 357, 362 (9th Cir. 1994), cert. denied, 131 L.Ed.2d 223, 115 S.Ct. 1367 (1995).

Federal Rule of Civil Procedure Rule 55 states that the clerk shall enter default when a party fails to defend under the rules. Defendants moved to dismiss, and the motion was granted in part and denied in part. Defendants subsequently failed to file a timely answer, and Saathoff moved for default. Saathoff argues that rather than immediately entering default, the clerk held the motion until defendants filed their answer five days later. The court then denied

the motion for default.

Entry of default and default judgments are generally disfavored, and doubts should be resolved against the party seeking default. Id. The district court has broad discretion to set aside an entry of default. Id. The court, here, properly declined to enter default in the first place.

IV

Because we find Saathoff's claims barred on statute of limitations grounds, we do not address defendants' res judicata defense.

The district court's grant of summary judgment in favor of defendants is AFFIRMED.